

CHAPTER 11.110 RCW

CHARITABLE TRUSTS

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RCW 11.110.010 Purpose of chapter. The purpose of this chapter is to facilitate public supervision over the administration of public charitable trusts and similar relationships and to clarify and implement the powers and duties of the attorney general and the secretary of state with relation thereto. [1993 c 471 § 25; 1985 c 30 § 113. Prior: 1967 ex.s. c 53 § 1. Formerly RCW 19.10.010.]

NOTES:

Severability--Effective date--1993 c 471: See RCW 19.09.914 and 19.09.915.

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

RCW 11.110.020 Definitions. When used in this chapter, unless the context otherwise requires:

"Person" means an individual, organization, group, association, partnership, corporation, or any combination of them.

"Trustee" means (1) any person holding property in trust for a public charitable purpose; except the United States, its states, territories, and possessions, the District of Columbia, Puerto Rico, and their agencies and subdivisions; and (2) a corporation formed for the administration of a charitable trust or holding assets subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes: PROVIDED, That the term "trustee" does not apply to (a) religious corporations duly organized and operated in good faith as religious organizations, which have received a declaration of current tax exempt status from the government of the United States; their duly organized branches or chapters; and charities, agencies, and organizations affiliated with and forming an integral part of said organization, or operated, supervised, or controlled directly by such religious corporations nor any officer of any such religious organization who holds property for religious purposes: PROVIDED, That if such organization has not received from the United States government a declaration of current tax exempt status prior to the time it receives property under the terms of a charitable trust, this exemption shall be applicable for two years only from the time of receiving such property, or until such tax exempt status is finally declared, whichever is sooner; or (b) an educational institution which is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts. [1985 c 30 § 114. Prior: 1971 ex.s. c 226 § 1; 1967 ex.s. c 53 § 2. Formerly RCW 19.10.020.]

NOTES:

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

RCW 11.110.040 Information, documents, and reports are public records--Inspection--Publication. All information, documents, and reports filed with the secretary of state under this chapter are matters of public record and shall be open to public inspection, subject to reasonable regulation: PROVIDED, That the secretary of state shall withhold from public inspection any trust instrument so filed whose content is not exclusively for charitable purposes. The secretary of state may publish, on a periodic or other basis, such information as may be necessary or

appropriate in the public interest concerning the registration, reports, and information filed with the secretary of state or any other matters relevant to the administration and enforcement of this chapter. [1993 c 471 § 26; 1985 c 30 § 115. Prior: 1967 ex.s. c 53 § 4. Formerly RCW 19.10.040.]

NOTES:

Severability--Effective date--1993 c 471: See RCW 19.09.914 and 19.09.915.

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

RCW 11.110.051 Registration of trustee--Requirements--Exception--Application of chapter to nonregistered trustees. (1) Except as provided in subsection (2) of this section, a trustee, as defined by RCW 11.110.020, must register with the secretary of state if, as to a particular charitable trust:

(a) The trustee holds assets in trust, invested for income-producing purposes, exceeding a value established by the secretary of state by rule;

(b) Under the terms of the trust all or part of the principal or income of the trust can or must currently be expended for charitable purposes; and

(c) The trust instrument does not require the distribution of the entire trust corpus within a period of one year or less.

(2) A trustee of a trust, in which the only charitable interest is in the nature of a remainder, is not required to register during any life estate or other term that precedes the charitable interest. This exclusion from registration applies to trusts which have more than one noncharitable life income beneficiary, even if the death of one such beneficiary obligates the trustee to distribute a remainder interest to charity.

(3) A trustee of a charitable trust that is not required to register pursuant to this section is subject to all requirements of this chapter other than those governing registration and reporting to the secretary of state. [1997 c 124 § 1.]

RCW 11.110.060 Instrument establishing trust, inventory of assets, registration status, successor trustee information, and amendments to be filed. (1) Every trustee required to file under RCW 11.110.051 shall file with the secretary of state within four months after receiving possession or control of the trust corpus, or after the trust becomes a trust described by RCW 11.110.051(1):

(a) A copy of the instrument establishing his or her title, powers, or duties;

(b) An inventory of the assets of such charitable trust; and

(c) A registration form setting forth the trustee's name, mailing address, physical address if different, and additional identifying information required by the secretary by rule.

(2) A successor trustee to a previously registered trust shall file a registration form and inventory of assets within four months after receiving possession or control of the trust corpus.

(3) A trustee required to register shall file with the secretary of state copies of all amendments to the trust instrument within four months of the making of the amendment.

[1997 c 124 § 2; 1993 c 471 § 28; 1985 c 30 § 117. Prior: 1984 c 149 § 150; 1971 ex.s. c 226 § 2; 1967 ex.s. c 53 § 6. Formerly RCW 19.10.060.]

NOTES:

Severability--Effective date--1993 c 471: See RCW 19.09.914 and 19.09.915.

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability--Effective dates--1984 c 149: See notes following RCW 11.02.005.

RCW 11.110.070 Tax or information return or report--Filing--Rules--Forms. Every trustee required to register under RCW 11.110.051 shall file with the secretary of state a copy of each publicly available United States tax or information return or report of the trust at the time that the trustee files with the internal revenue service. The secretary may provide by rule for the exemption from reporting under this section by some or all trusts not required to file a federal tax or information return, and for a substitute form containing similar information to be used by any trusts not so exempted. [1997 c 124 § 3; 1993 c 471 § 29; 1985 c 30 § 118. Prior: 1971 ex.s. c 226 § 3; 1967 ex.s. c 53 § 7. Formerly RCW 19.10.070.]

NOTES:

Severability--Effective date--1993 c 471: See RCW 19.09.914 and 19.09.915.

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

RCW 11.110.075 Trust not exclusively for charitable purposes--Instrument and information not public--Access. A trust is not exclusively for charitable purposes, within the meaning of RCW 11.110.040, when the instrument creating it contains a trust for several or mixed purposes, and any one or more of such purposes is not charitable within the meaning of RCW 11.110.020, as enacted or hereafter amended. Such instrument shall be withheld from public inspection by the secretary of state and no information as to such noncharitable purpose shall be made public. The attorney general shall have free access to such information. [1997 c 124 § 4; 1993 c 471 § 30; 1985 c 30 § 120. Prior: 1984 c 149 § 154; 1971 ex.s. c 226 § 5. Formerly RCW 19.10.075.]

NOTES:

Severability--Effective date--1993 c 471: See RCW 19.09.914 and 19.09.915.

Short title--Application--Purpose--Severability--1985 c 30:
See RCW 11.02.900 through 11.02.903.

Severability--Effective dates--1984 c 149: See notes following RCW 11.02.005.

RCW 11.110.090 Uniformity of chapter with laws of other states. It is the purpose of this chapter to make uniform the laws of this and other states on the subject of charitable trusts and similar relationships. Recognizing the necessity for uniform application and enforcement of this chapter, its provisions are hereby declared mandatory and they shall not be superseded by the provisions of any trust instrument or similar instrument to the contrary. [1985 c 30 § 122. Prior: 1967 ex.s. c 53 § 9. Formerly RCW 19.10.090.]

NOTES:

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

RCW 11.110.100 Investigations by attorney general authorized--Appearance and production of books, papers, documents, etc., may be required. The attorney general may investigate transactions and relationships of trustees and other persons subject to this chapter for the purpose of determining whether the trust or other relationship is administered according to law and the terms and purposes of the trust, or to determine compliance with this chapter in any other respect. He may require any officer, agent, trustee, fiduciary, beneficiary, or other person, to appear, at a time and place designated by the attorney general in the county where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear. [1985 c 30 § 123. Prior: 1967 ex.s. c 53 § 10. Formerly RCW 19.10.100.]

NOTES:

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

RCW 11.110.110 Order to appear--Effect--Enforcement--Appellate review. When the attorney general requires the attendance of any person, as provided in RCW 11.110.100, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, and, upon application of the attorney general, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in the record, and shall be subject to review by the supreme court or the court of appeals. [1988 c 202 § 20; 1985 c 30 § 124. Prior: 1984 c 149 § 157; 1971 c 81 § 64; 1967 ex.s. c 53 § 11. Formerly RCW 19.10.110.]

NOTES:

Rules of court: Writ procedure superseded by RAP 2.1(b), 2.2, 18.22.

Severability--1988 c 202: See note following RCW 2.24.050.

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability--Effective dates--1984 c 149: See notes following RCW 11.02.005.

RCW 11.110.120 Proceedings to secure compliance and proper trust administration--Attorney general to be notified of judicial proceedings involving charitable trust--Powers and duties additional. The attorney general may institute appropriate proceedings to secure compliance with this chapter and to secure the proper administration of any trust or other relationship to which this chapter applies. He shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in which, at common law, he is a necessary or proper party as representative of the public beneficiaries. The notification shall be given as provided in RCW 11.96.100, but this notice requirement may be waived at the discretion of the attorney general. The powers and duties of the attorney general provided in this chapter are in addition to his existing powers and duties, and are not to be construed to limit or to restrict the exercise of the powers or the performance of the duties of the attorney general or of any prosecuting attorney which they may exercise or perform under any other provision of law. Except as provided herein, nothing in this chapter shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it. [1985 c 30 § 125. Prior: 1984 c 149 § 158; 1967 ex.s. c 53 § 12. Formerly RCW 19.10.120.]

NOTES:

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability--Effective dates--1984 c 149: See notes following RCW 11.02.005.

RCW 11.110.125 Violations--Refusal to file reports, perform duties, etc. The willful refusal by a trustee to make or file any report or to perform any other duties expressly required by this chapter, or to comply with any valid rule adopted by the secretary of state under this chapter, shall constitute a breach of trust and a violation of this chapter. [1993 c 471 § 32; 1985 c 30 § 126. Prior: 1971 ex.s. c 226 § 6. Formerly RCW 19.10.125.]

NOTES:

Severability--Effective date--1993 c 471: See RCW 19.09.914 and 19.09.915.

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

RCW 11.110.130 Violations--Civil action may be prosecuted. A civil action for a violation of this chapter may be prosecuted by the attorney general or by a prosecuting attorney. [1993 c 471 § 33; 1985 c 30 § 127. Prior: 1967 ex.s. c 53 § 13. Formerly RCW 19.10.130.]

NOTES:

Severability--Effective date--1993 c 471: See RCW 19.09.914 and 19.09.915.

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

RCW 11.110.140 Penalty. Every false statement of material fact knowingly made or caused to be made by any person in any statement or report filed under this chapter and every other violation of this chapter is a gross misdemeanor. [1985 c 30 § 128. Prior: 1967 ex.s. c 53 § 14. Formerly RCW 19.10.140.]

NOTES:

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

RCW 11.110.200 Tax Reform Act of 1969, state implementation--Application of RCW 11.110.200 through 11.110.260 to certain trusts defined in federal code. RCW 11.110.200 through 11.110.260 shall apply only to trusts which are "private foundations" as defined in section 509 of the Internal Revenue Code, "charitable trusts" as described in section 4947(a)(1) of the Internal Revenue Code, or "split-interest trusts" as described in section 4947(a)(2) of the Internal Revenue Code. With respect to any such trust created after December 31, 1969, RCW 11.110.200 through 11.110.260 shall apply from such trust's creation. With respect to any such trust created before January 1, 1970, RCW 11.110.200 through 11.110.260 shall apply only to such trust's federal taxable years beginning after December 31, 1971. [1993 c 73 § 6; 1985 c 30 § 129. Prior: 1984 c 149 § 161; 1971 c 58 § 1. Formerly RCW 19.10.200.]

NOTES:

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability--Effective dates--1984 c 149: See notes following RCW 11.02.005.

RCW 11.110.210 Tax Reform Act of 1969, state implementation--Trust instruments deemed to contain prohibiting provisions. The trust instrument of each trust to which RCW 11.110.200 through 11.110.260 applies shall be deemed to contain provisions prohibiting the trustee from:

(1) Engaging in any act of "self-dealing," as defined in section 4941(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code;

(2) Retaining any "excess business holdings," as defined in section 4943(c) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code;

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code; and

(4) Making any "taxable expenditures," as defined in section 4945(d) of the Internal Revenue Code, which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code;

PROVIDED, That this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code. [1993 c 73 § 7; 1985 c 30 § 130. Prior: 1984 c 149 § 162; 1971 c 58 § 2. Formerly RCW 19.10.210.]

NOTES:

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability--Effective dates--1984 c 149: See notes following RCW 11.02.005.

RCW 11.110.220 Tax Reform Act of 1969, state implementation--Trust instruments deemed to contain certain provisions for distribution. The trust instrument of each trust to which RCW 11.110.200 through 11.110.260 applies, except "split-interest" trusts, shall be deemed to contain a provision requiring the trustee to distribute, for the purposes specified in the trust instrument, for each taxable year of the trust, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code. [1993 c 73 § 8; 1985 c 30 § 131. Prior: 1984 c 149 § 163; 1971 c 58 § 3. Formerly RCW 19.10.220.]

NOTES:

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability--Effective dates--1984 c 149: See notes following RCW 11.02.005.

RCW 11.110.230 Tax Reform Act of 1969, state implementation--Rights, powers, of courts, attorney general, not impaired. Nothing in RCW 11.110.200 through 11.110.260 shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust. [1985 c 30 § 132. Prior: 1984 c 149 § 164; 1971 c 58 § 4. Formerly RCW 19.10.230.]

NOTES:

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability--Effective dates--1984 c 149: See notes following RCW 11.02.005.

RCW 11.110.250 Tax Reform Act of 1969, state implementation--Application to trust created after June 10, 1971, or amendment to existing trust. Nothing in RCW 11.110.200 through 11.110.260 shall limit the power of a person who creates a trust after June 10, 1971 or the power of a person who has retained or has been granted the right to amend a trust created before June 10, 1971, to include a specific provision in the trust instrument or an amendment thereto, as the case may be, which provides that some or all of the provisions of RCW 11.110.210 and 11.110.220 shall have no application to such trust. [1985 c 30 § 134. Prior: 1984 c 149 § 167; 1971 c 58 § 6. Formerly RCW 19.10.250.]

NOTES:

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability--Effective dates--1984 c 149: See notes following RCW 11.02.005.

RCW 11.110.260 Tax Reform Act of 1969, state implementation--Severability--RCW 11.110.200 through 11.110.260. If any provision of RCW 11.110.200 through 11.110.260 or the application thereof to any trust is held invalid, such invalidity shall not affect the other provisions or applications of RCW 11.110.200 through 11.110.260 which can be given effect without the invalid provision or application, and to this end the provisions of RCW 11.110.200 through 11.110.260 are declared to be severable. [1985 c 30 § 135. Prior: 1984 c 149 § 168; 1971 c 58 § 7. Formerly RCW 19.10.260.]

NOTES:

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability--Effective dates--1984 c 149: See notes following RCW 11.02.005.

RCW 11.110.270 Tax Reform Act of 1969, state implementation--Not for profit corporations.
See RCW 24.40.010 through 24.40.070.

RCW 11.110.900 Severability--1967 ex.s. c 53. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1985 c 30 § 136. Prior: 1967 ex.s. c 53 § 15. Formerly RCW 19.10.900.]

NOTES:

Short title--Application--Purpose--Severability--1985 c 30: See RCW 11.02.900 through 11.02.903.